

VIA CM/ECF

April 11, 2025

Honorable Alex G. Tse
United States Magistrate Judge
San Francisco Courthouse, Courtroom A – 15th Floor
450 Golden Gate Avenue, San Francisco, CA 94102

Re: Law v. Federal Bureau of Prisons, Case No. 4:24-cv-06628-YGR

Dear Judge Tse,

Pursuant to Civil Standing Order§ VII.B and *Dkt.* Nos. 29 and 30, noting “this matter was recently referred for discovery, including for document production issues” and instructing the parties to submit a joint statement, Plaintiff Victoria Law (“Plaintiff”) and Defendant Federal Bureau of Prisons (“Defendant”) submit this second joint letter brief and index documenting the status of production as of March 21, 2025. *See* Ex. 1, Production Status Index. The parties understood the referral to be a referral for the court to enter a Production Schedule Order or similarly styled order.

Counsel met and conferred by videoconference and communicated via email in good faith before filing the joint statement and could not resolve the issues described herein.

Counsel for Defendant will be out of the country and unavailable until May 5, 2025, and BOP thus asks that the Court not schedule a hearing, further briefing, or a further meet and confer session while Defendant’s counsel is unavailable.

Dated April 11, 2025

Respectfully submitted

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In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury that all signatories have concurred in the filing of this document.

Plaintiff Victoria Law’s Statement

FOIA’s obligations are binding, and where the agency refuses to prioritize or resource timely compliance, it falls to the Court to intervene and enforce the statute. BOP admits it has not implemented its grant of expedited processing by making records available to Plaintiff Law as soon as practicable. In fact, the agency fails to even distinguish Plaintiff’s expedited processing request from the thousands of pending Simple- and Complex-Track requests pending in its backlogged FOIA queue.¹ Plaintiff renews her request (*See Dkt.* Nos. 21, 28, 31) for a sanctions enforceable order to halt FOIA violations that, at a minimum, addresses 4 previously briefed issues: 1. monthly production and status update deadlines; 2. production substance; 3. production format; 4. substantial production completion deadline and case procedures that meet FOIA’s expedited standard.

Recognizing the clear risk of harm and public interest at stake—evidenced by the BOP’s grant of expedited processing after Law submitted 80 pages of proof of civil, criminal, compassionate release, immigration, and government proceedings that would benefit from publication of articles and records—Law requested **production** (not review) of 5,000 pages to ensure timely access and case resolution. *See Dkt.* No. 1 Ex. A. at Ex 1; Ex. A. at Ex 2; Ex. A. at Ex 3.; Ex. A. at Ex 4). BOP’s proposed rate of **reviewing** (not releasing) 1,000 pages a month would render Plaintiff Law’s right to expedition a dead letter by unlawful delaying final production for more than six years on email alone (Plaintiff awaits production on 46 other items for which BOP has provided no page estimate).

Because “unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA” the Ninth Circuit has long recognized “courts have a duty to prevent these abuses.” *Long v. IRS*, 693 F.2d 907, 909 (9th Cir. 1982). This duty is particularly important in expedited processing cases. That is because “expedited processing of a FOIA request is a statutory right, not just a matter of court procedure.” *Edmonds v. F.B.I.*, 417 F.3d 1319, 1323 (D.C. Cir. 2005). For requests granted expedited processing, agency delay constitutes denial of that statutory right. *Elec. Priv. Info. Ctr. v. Dep’t of Justice*, 426 F. Supp. 2d 30, 41 (D.D.C. 2006) (“Unless the requests are processed without delay, EPIC’s right to expedition will be lost.”). In this constructively exhausted, expedited processing FOIA case, the court may “retain jurisdiction” and “allow the agency additional time” to review and produce records only “[i]f the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request.” *Id.* § 552(a)(6)(C)(i). Exceptional circumstances do not include “a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.” 5 U.S.C. 552(a)(6)(C)(ii). To prove “due diligence” the agency must prove that it has a satisfactory “present procedure for processing FOIA requests”—such as one that categorizes requests by difficulty, seeks to proceed on a “first-in, first-out basis,” and is staffed by an adequate number of personnel. *Informed Consent Action Network v. F.D.A.*, No. 1:24-CV-1761 (CJN), 2024 WL 4836405, at *1 (D.D.C. Nov. 20, 2024) (internal citations omitted).

“The FOIA imposes no limits on courts’ equitable powers in enforcing its terms.” *Payne Enters., Inc. v. U.S.*, 837 F.2d 486, 494 (D.C. Cir. 1988). Courts within this circuit routinely issue orders when they determine agencies are violating the “as soon as practicable” expedited processing requirement (5 U.S.C. § 552(a)(6)(E)(iii)), and “promptly available production

¹ *Dkt.* 31-2, Christenson Decl. ¶ 6 (failing to acknowledge Law’s request should be in the expedited processing track).

requirement" (5 USC 552(a)(3)(A)). *Nightingale v. USCIS*, 507 F. Supp. 3d 1193 (N.D. Cal. 2020) (“Ordering defendants to adhere to FOIA timing requirements and provide quarterly reports on their compliance are forms of relief that are ordinarily granted where an agency routinely violates a statute or regulation.”) *quoting Hajro v. USCIS*, 832 F. Supp. 2d 1095, 1120 (N.D. Cal. 2011) and *Gonzalez Rosario v. USCIS*, 365 F. Supp. 3d 1156, 1163 (W.D. Wash. 2018). *See also Los Angeles Times v. DHS*, No. 2:20-cv-10911-FLA (MRWx), 2022 U.S. Dist. LEXIS 239554 (C.D. Cal. Mar. 7, 2022) (denying an agency’s motion reconsider a minute order requiring agency to process at least 3,000 pages per month of records involving allegations of sexual and other abuse against incarcerated migrants). These orders vindicated the right to expedited processing and statutory compliance. BOP’s proposed path forward vitiates it. “To put it another way, adopting [the agency]’s approach would write the requirement for expedited processing out of the statute.” *Stevens v. HHS*, 666 F. Supp. 3d 734, 746 (N.D. Ill. 2023)

BOP has not met its burden to show due diligence or exceptional circumstances justifying the six-year delay on email production alone that it invites the court to sanction in this case. The Christenson Declaration (*Dkt. 31-2*, Christenson Decl. ¶6) admits BOP could process up to 1,000 pages monthly. BOP has elected not to do so, despite finding it merited expedited processing. BOP admits the request is being treated as number 5,028 overall—apparently negating its status as an expedited request. (*Id.*). This admission is facially incompatible with FOIA’s expedited framework, which requires that qualifying requests be processed “as soon as practicable” (5 U.S.C. § 552(a)(6)(E)(iii)). In the 265 days between granting expedited status on 7/20/24 and this filing, BOP released only 728 pages that were not public already; 182 pages a month. BOP has not indicated that it is deluged with a volume of requests vastly over that which Congress anticipated, or a system under strain due to unforeseen events. It outlines a system built to fail FOIA obligations: its software and workflows inherently produce non-compliant, unusable records, and it chooses to staff below historical levels. That’s an affirmative agency decision to de-prioritize statutory obligations, not an “exceptional circumstance.”

“[T]he decision of the executive branch” not to seek a change in law or additional funding from Congress “would be consistent with a policy choice . . . to delay FOIA requests rather than ask for additional funds to meet them in a timely way.” *Fiduccia v. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999). Where an agency fails to seek additional resources that would facilitate statutory compliance with the “tough statute” Congress wrote “on agency delay in FOIA compliance”, that policy choice has legal consequences. *See, e.g., Fiduccia*, 185 F. 3d. 1041-42. Resource constraints thus do “not grant the agency carte blanche to repeatedly violate congressionally mandated deadlines.” *Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, No. 14-1130 SC, 2015 WL 4452136, at *8 (N.D. Cal. July 20, 2015). *See also Nightingale v. USCIS*, 507 F. Supp. 3d 1193 (N.D. Cal. 2020) (“Ordering defendants to adhere to FOIA timing requirements” is “ordinarily granted where an agency routinely violates a statute or regulation.”). And an agency’s resource constraints do not constitute good cause for granting “two years of additional review.”

BOP’s non-compliance with its statutory obligations is not due to unexpected demand or exceptional circumstances but to long-standing agency funding and staffing decisions. BOP Annual Report data² show the FOIA office is now at its lowest staffing level in 17 years. (*See*

² Attached is a true and accurate copy of BOP data downloaded from FOIA.GOV, <https://www.foia.gov/data.html> (last visited Apr 3, 2025) “Create an Annual Report” function. Plaintiff requests the court take notice of these records as a court may take judicial notice “at any

Ex. 2 at 1) BOP's choices have predictably led to increased backlogs (*Id.* at 2); increased median expedited processing times (*Id.* at 3); a virtual elimination of prompt expedited processing responses (*Id.* at 5); and litigation costs. (*Id.* at 6). Resource constraints caused by internal choices do not excuse statutory violations. The enclosed orders (Production Schedule Orders, Status Report Orders, and other Orders *See* Ex. 3)³ are differently styled, but all reflect courts acting on jurisdiction to: 1. enjoin withholding; 2. order production of improperly withheld records. This Court should issue a similar order remedying BOP's violations and preventing future harm.

Defendant Federal Bureau of Prisons' Statement

BOP has limited FOIA resources due to the Hiring Freeze and Retirements. BOP currently has a total of nineteen FOIA staff; on February 28, 2025, four FOIA staff retired including the FOIA Chief. Christenson Dec. ¶5. Of the remaining staff, nine (one supervisor and eight Government Information Specialists ("GIS")) are assigned to the Administrative and Intake Team ("AIT"). *Id.* Two staff on the AIT are new hires (hired shortly before the hiring freeze) and in training and one is retiring in May 2025. *Id.* The AIT is responsible for receiving and evaluating all FOIA requests sent to BOP to determine appropriate courses of action. *Id.* AIT rarely processes FOIA requests as that is not its main area of responsibility; AIT staff handle a process outside of FOIA to assist attorneys who submit requests for their clients' medical records in support of motions for compassionate release and requests for home confinement. *Id.* & ¶ 4. Of the remaining ten staff, eight are assigned to the Processing and Litigation Team ("PLT"), which includes Ms. Christensen. *Id.* ¶ 5. Of the eight GISs, three are new hires (hired shortly before the hiring freeze) and in training. *Id.* The PLT is responsible for the actual processing of all records responsive to BOP FOIA requests. *Id.* Processing includes page by page, line by line reviews of every document. *Id.* When information is identified as exempt from release, the PLT applies the appropriate exemption(s) and, upon review of all records, prepares a determination letter which identifies the scope of the records, status of the records (number released in full, etc.), any exemptions applied and appeal rights to the Office of Information Policy of the Department of Justice. *Id.* PLT makes the production of the records and the determination letter to the requester. *Id.* Assistance also includes meeting court ordered production schedules and assisting in drafting declarations and *Vaughn* indexes. *Id.* As of March 1, 2025, in addition to her supervisory duties of the PLT, Ms. Christenson is also the Acting FOIA Chief for an indefinite period of time. *Id.* The remaining two staff are agency counsel for FOIA litigation. *Id.* Because of the hiring freeze impacting all Executive Branch agencies, BOP will be unable to replace the recently retired staff in the near future. *Id.*

stage of the proceeding" of facts that are "not subject to reasonable dispute" when they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. § 201(b)(2). Records that are made publicly available by an agency constitute matters of public records that may be judicially noticed. *Stengel v. Medtronic Inc.*, 676 F.3d 1159, 1160 (9th Cir. 2012), *rev'd on other grounds*, 704 F.3d 1224 (9th Cir. 2013).

³A court may take judicial notice of the contents of "court filings and other matters of public record." *See also Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (citing *Burbank–Glendale–Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998))

Plaintiff contends that BOP's resource constraints are caused by "internal choices." Not so. The hiring freeze is out of BOP's control, as it was instituted by the President. See <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/> Similarly, BOP has no ability to stop its FOIA staff from retiring from federal service.

BOP Cannot Release 5000 Pages Per Month. In a year with 5,000 FOIA requests, that would average 625 requests per each of the eight staff members of the PLT. *Id.* In fact, BOP receives between 4,403 and 6,695 FOIA requests per fiscal year. *Id.* ¶ 3. The Court should not order the release of 5,000 pages per month. BOP has over 6800 open requests with 6369 currently backlogged. Christenson Dec. ¶ 6. Plaintiff's request is 4996 out of the 6837 open requests. *Id.* In order to reach the 5000 deduplicated pages per month Plaintiff is requesting, the 4995 requests older than Plaintiff's request would have to be placed on an indefinite hold as the majority of the PLT's limited resources would have to be devoted to processing records to meet Plaintiff's 5000 deduplicated page production request. *Id.* While it would strain resources, BOP could process 1000 pages each month. *Id.* Processing 1000 pages does not necessarily equate to production of 1000 pages. Christenson Dec. ¶ 2. The pace proposed by BOP is more than the rate for the other three cases in litigation; there are two cases where BOP is required to process 500 pages per month, and one where BOP is required to produce 300 pages per month. *Id.* BOP disagrees with the contention that releasing 5,000 pages monthly is reasonable, as judges set lower rates of production in this district. *See, e.g., Swords to Plowshares v. U.S. Dep't of Veterans Affairs*, No. 3:20-cv-07146-JSC, ECF No. 31 (March 19, 2021) (600 pages); *USRTK v. U.S. Dep't of Education*, No. 20-cv-09117-DMR, ECF No. 21 (750 pages); *Cohodes v. U.S. Dep't of Justice et al.*, 3:20-cv-4015, ECF No. 78 (500 pages).

The Court should disregard Plaintiff's attachment of cases. The Court's standing order provides that if there is a dispute that is not resolved, "the parties shall prepare a joint statement of not more than five pages" that, among other things, requires the inclusion of "each party's position, including pertinent factual background, requested relief, *and citations to legal authority*; . . ." Civil Standing Order of Magistrate Judge Alex G. Tse at VII.B.2 (emphasis added). Plaintiff should have put her legal authority in the letter brief, not in an attachment.

If the Court does review those citations, the Court will see that Plaintiff has cherry-picked cases from all around the country in an attempt in to justify the request that BOP release 5,000 pages per month. Plaintiff cites just one case from this District: *Center for Gender and Refugee Studies and Al Otro Lano, Inc. v. U.S. Customs and Border Production*, 3:24-cv-1601-TLT. In that case the parties agreed that the agency in that case would "process 1200 documents per month, beginning in January 2025." ECF No. 30 (11/25/24 Stipulation to Continue Briefing Schedule for Motion for Judgment on the Pleadings and Response to Court's Inquiries). BOP has made an offer very similar to this one, an agreement to process 1000 pages per month, but Plaintiff refuses to budge from the demand for 5,000 pages per month, and so BOP asks the Court to use a number within the range from other cases from this District.

Plaintiff argues that BOP's decision to grant expedited processing to Plaintiff's FOIA request justifies her request to release 5,000 pages per month. But the letter from BOP granting expedited processing states in relevant part: "Your request meets the requirement to be processed on an expedited basis and will be expedited to the best of our ability. The request will be placed on the processing track ahead of other requests and processed as soon as practicable." *See* ECF No. 1-2 in this case. Again, if the Court were to order the release of 5,000 pages per month, it would put thousands of other FOIA requests on hold. BOP's proposal would allow the agency to

work on the backlogged FOIA requests while allowing BOP to process more records for this case than it is doing for any other case in litigation.

Plaintiff claims time is of the essence for her client. Plaintiff's principal argument for the urgency of release at the time of her request and in her complaint is the case of *California Coalition for Women Prisoners, et al. v. United States Federal Bureau of Prisons, et al.*, 4:23-cv-04155-YGR. At the time Plaintiff submitted her FOIA request, this class action case on behalf of former inmates of the Dublin prison was scheduled for trial in 2025. Since that time, however, the parties to that litigation signed a consent decree on December 5, 2024. The Court gave final approval of the consent decree on February 27, 2025. ECF No. 473. The Court found that the "[p]arties have negotiated an agreement that provides procedural protections for class members moving forward, and allows for the continuation of the Monitor's work ensuring that, to the extent possible, past harms are rectified." *Id.* at p. 7.

Plaintiff does not represent any of the individuals formerly incarcerated at Dublin. The lawyers that represent the class were able to reach a consent decree in *CCWP* without the need for FOIA documents to either represent the class or settle the case. A simple google search about the former Dublin prison would show thousands of news stories across all forms of media. None of the journalists covering the former Dublin prison needed the documents Plaintiff seeks to report on the story. Plaintiff herself has published numerous articles without needing the documents.